

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

Case No. A-5669

PETITION OF BRUCE AND DEBRA S. VIVARI

(Hearing held November 7, 2001)

OPINION OF THE BOARD

(Effective date of Opinion, January 25, 2002)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for variances from Section 59-C-1.323(b)(1). The petitioners propose to construct a one-story addition that requires a variance of three (3) feet as it is within nine (9) feet of the side lot line and a variance 1.30 feet as it reduces the sum of both side yards to 23.70 feet. The required side lot line setback is twelve (12) feet and the required sum of both side yards is twenty-five (25) feet.

The subject property is Lot 5, Block A, Glen Park Subdivision, located at 12605 Saint James Road, Rockville, Maryland, in the R-200 Zone (Tax Account No. 00129073).

Decision of the Board: Requested variances **denied**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes to construct a one-story addition in the western side yard. The proposed construction would expand the existing one-car garage into a two-car garage.
2. The petitioner testified the lot is narrowest in its front section and widens in the rear section of the property. The petitioner testified that the lot was not narrow in comparison to the neighboring properties, but in the comparison between its front and rear yards.
3. The petitioner testified that the proposed construction could not be located in the eastern side yard because of a mature pine tree and a severe slope. See, Exhibit Nos. 6(b)-6(d). The petitioner testified that the neighboring properties are not impacted by the slope.
4. In response to questions from the Board, the petitioner testified that the residence is built on a slope and that while construction would not be impossible, construction in the eastern side yard would require additional foundation work.

FINDINGS OF THE BOARD

Based upon the petitioner's binding testimony and the evidence of record, the Board finds that the variances must be denied. The requested variances do not comply with the applicable standards and requirements set forth in Section 59-G-3.1(a) as follows:

(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.

The Board finds that the petitioner's lot has no peculiar topographical or other conditions that impact the property. The Board further finds that the slope of the property would not prevent construction in another area on the lot and does not impact the area where the addition is proposed.

Since the petition does not meet the requirements of Section 59-G-1.3(a), the Board did not consider the other requirements found in that section. Accordingly, the requested variances of three (3) feet from the required twelve (12) side lot line setback and of 1.30 feet from the required twenty-five (25) foot sum of both side yards requirement are denied.

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Louise L. Mayer, seconded by Donna L. Barron, with Angelo M. Caputo and Donald H. Spence, Jr., Chairman, in agreement, and with Allison Ishihara Fultz, in opposition, the Board adopted the foregoing Resolution.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing
Opinion was officially entered in the
Opinion Book of the County Board of
Appeals this 25th day of January, 2002.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.